IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO.1122 OF 2006
IN
CRIMINAL APPEAL NO.1027 OF 2006

Anil Raghunath Vishwakarma. ..Applicant.
Vs.
The State of Maharashtra and anr. ..Respondents.

Mr.R.P.Mishra for the Applicant.
Mr.K.V.Saste, A.P.P. for the State.

CORAM: J.N. PATEL &
R.S. MOHITE, JJ.
DATED :22ND JANUARY, 2007.

P.C.

1. The applicant is seeking suspension of sentence and his release on bail. The applicant came to be convicted on a charge of having committed murder of his wife by pouring kerosene on her person and setting her ablaze by the Additional Sessions Judge, Greater Bombay by Judgment and order dated 16.9.2006 in Sessions Case No.1348 of 1999.

2. It is the prosecution case that the applicant and her parents treated the deceased Sushma with cruelty and suspected her character. They also forced her to extract dowry from her parents. It is in this background, on the day of incident, the applicant is

alleged to have committed her murder. The applicant was tried along with co-accused who are his parents. The Trial Court convicted the applicant and give benefit of doubt to the co-accused/parents.

3. Mr. Mishra, the learned counsel for the applicant submitted that the prosecution case rests on the evidence of interested i.e. relatives of the deceased and four dying declarations of the deceased recorded at different stages, which are inconsistent. It is submitted that, at the first opportunity, the two dying declarations came to be recorded in which she has completely exonerated the accused persons and has expressed that she attempted to commit suicide. It is subsequently under the influence of her parents, she implicated the applicant and his parents.

4. It is further submitted that the applicant has to look after his aged parents and shoulder family responsibility. The applicant therefore, prays for suspension of sentence

5. The learned A.P.P. objects to the application for suspension of sentence for the reason that the earlier two dying declarations came to be recorded when the victim was under duress from the applicant and she was

threatened that her child would be done away, if she implicates the applicant. It is only after her parents arrived at hospital, she was shifted to the better hospital and there she gave true story. Therefore, it cannot be said that it is a case of inconsistent dying declarations.

6. We have gone through the evidence on record and the judgment of the Trial Court and we find that the Trial Court has given cogent reasons for disbelieving the earlier two dying declarations. We do not find that it is a fit case where court should show indulgence by suspending the substantive sentence of the applicant. The child of the deceased is also in the custody of maternal grant parents of the deceased. Therefore, in the facts and circumstances of the case, application is rejected.

. The appeal to be taken up for hearing in due course.

(J.N. PATEL, J.)

(R. S. MOHITE, J.)